



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092  
1-916-324-1825 • FAX 1-916-322-4530  
[www.boe.ca.gov](http://www.boe.ca.gov)

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January 23, 2013

VIA INTERNET

CYNTHIA BRIDGES  
Executive Director

Dear Interested Party:

The Audit Manual (AM) is a guide for the Board of Equalization (BOE) staff in administering tax and fee programs. It is available to the public and can be accessed from the BOE web page at <http://www.boe.ca.gov/sutax/staxmanuals.htm>.

The Sales and Use Tax Department (SUTD) is proposing to add AM section 0101.22, *Standard of Proof*, to clarify that for sales and use tax cases where there is conflicting evidence and civil tax fraud is not involved, the BOE applies the preponderance of evidence standard of proof. The proposed section is provided on the following page for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons.

If you have any comments or suggestions related to the proposed AM revision, you may contact the BOE at [AM.RevisionSuggestions@boe.ca.gov](mailto:AM.RevisionSuggestions@boe.ca.gov). Your comments or suggestions must be received by BOE no later than **March 27, 2013** in order to be considered by staff. Thank you for your consideration.

Sincerely,

Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department

**STANDARD OF PROOF****0101.22**

Pursuant to Revenue and Taxation Code (RTC) section 6091, it is presumed that all gross receipts are subject to tax until the contrary is established. The effect of this rebuttable presumption is to impose upon the taxpayer the burden of proving that its gross receipts are not subject to tax. Similarly, with respect to transactions subject to use tax, the taxpayer bears the burden of proving that tax does not apply. (See, e.g. RTC § 6241, 6248.) In cases where there is conflicting evidence and civil tax fraud is not involved, the BOE applies the preponderance of evidence standard of proof. This is the burden of proof as specified by Evidence Code section 115 and applied by the courts in sales and use tax matters not involving civil tax fraud. (See *Maganini v. Quinn* (1950) 99 Cal. App. 2d 1, 7-8, and *Honeywell, Inc. v. State Bd. of Equalization* (1982) 128 Cal. App. 3d 739, 748-749.)

The “preponderance of evidence” standard relates to the probability of truth, and can be defined as, “such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth” or, more succinctly, “more likely to be true than not true.” (1 Witkin, Cal. Evidence (4th ed. 2010) Burden, § 35; CACI 200.)

Pursuant to RTC sections 7053 and 7054, it is the responsibility of the taxpayer to maintain and make available for examination all records and other pertinent documents necessary to determine the correct tax liability. In performing an audit or other examination, staff should communicate with the taxpayer and/or its authorized representative to the fullest extent possible in an effort to establish facts that are relevant for sales and use tax audit purposes. When applying the preponderance of evidence standard, it is important that staff view all evidence in an objective manner, focusing on the quality of the evidence (i.e., original source documentation) and its probable truth or accuracy, and not only on the quantity of evidence produced.

Staff should follow the applicable guidelines set forth in Audit Manual sections 0304.00, *Verification Comments*, and 0305.00, *Miscellaneous Comments and Notes*, in documenting its review of the transactions.

*Note: This section clarifies existing law and does not signal a change in law or BOE policy. Staff should continue to apply these policies and procedures in conducting sales and use tax audits.*